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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 53

AMERICAN NEWSPAPER PUBLISHERS ASSOCIATION,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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INDEX

Subject Index

	Page
Petition for Certiorari	1
Opinions Below	2
Jurisdiction	2
Questions Presented	2
Statute Involved	2
Statement	3
The Facts	4
Specification of Errors to be Urged	12
Reasons Relied on for Granting the Writ	12
Conclusion	19
Appendix—Public Law 101—80th Congress	20

Table of Cases Cited

Aldridge v. *Williams*, 3 Howard 9 (1945)	18
Binns v. *United States*, 194 U.S. 486, 495 (1904)	18
Conway's Express v. *N.L.R.B.*, 29 LRRM 2617 (CA 2, March 24, 1952)	15
Duplex Printing Press v. *Deering*, 254 U.S. 443 (1921)	18
Evans v. *ITU*, 76 F. Supp. 881, 81 F. Supp. 675	3
Gemsco Inc. v. *Walling*, 324 U.S. 244, 260 (1945)	18
Musicians Local 77 and Gamble Enterprises, Inc., 92 NLRB No. 210 (Reversed, CA 6, May 9, 1952)	15
N.L.R.B. v. *Virginia Electric & Power Co.*, 314 U.S. 469	12
Packard Motor Car Co. v. *N.L.R.B.*, 330 U.S. 485, 492 (1947)	18
Railroad Commission v. *Chicago, B. & Q. R. Co.*, 257 U.S. 563, 589 (1922)	18
Schwegmann v. *Calvert Distillers Corp.*, 341 U.S. 384, 395 (1951)	18
Teamsters Local No. 294 and Conway's Express, 87 NLRB 972	15
United States v. *Shreveport Grain & Elevator Co.*, 287 U.S. 77, 83 (1932)	18

Statutes and Other Authority Cited

	Page
National Labor Relations Act, 61 Stat. 136, *et seq.*, 29 U.S.C. Supp. III, Section 151 *et seq.*	2
Section 7	13, 14
Section 8(b) (1) (A)	2, 13
Section 8(b) (1) (B)	3, 10
Section 8(b) (2)	3, 10
Section 8(b) (3)	13
Section 8(b) (6)	2, 12, 15, 17
Section 8(d)	13
Sutherland Statutory Construction, Section 4207 (3rd ed. 1943)	18
28 U.S.C. 1254 (1)	2

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 755

AMERICAN NEWSPAPER PUBLISHERS ASSOCIATION,

Petitioner

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, the American Newspaper Publishers Association, respectfully prays that a writ of certiorari be issued out of and under the seal of this Court to review a decree of the United States Court of Appeals for the Seventh Circuit entered on February 11, 1952, which granted in part and denied in part the relief requested by petitioner in a petition to modify an order of the National Labor Relations Board.[1]

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[1] The National Labor Relations Board will be referred to herein as the "Board"; the National Labor Relations Act, as amended, as the "Act"; the International Typographical Union and the individual respondents before the Board collectively as the "ITU" and the General Counsel of the Board as the "General Counsel."

Opinions Below

The opinion of the Court below in this and three companion cases is reported at 193 F. 2d 782.

The decision and order of the National Labor Relations Board together with the Trial Examiner's Intermediate Report are reported at 86 N.L.R.B. 951 (R. 339, 50).

Jurisdiction

The jurisdiction of this Court is invoked under 28 U. S. C. §1254(1).

The decree of the Court below sought to be reviewed was entered on February 11, 1952 (No. 10329, R. 3095).

Questions Presented

1. Whether the proviso to Section 8(b)(1)(A) of the National Labor Relations Act enables a labor organization to promulgate and enforce membership rules which coerce and restrain its members to aid and assist such labor organization in committing unfair labor practices prohibited by the Act.

2. Whether the demand and insistence of the International Typographical Union that publishers pay employees in their composing rooms for setting "bogus" violated Section 8(b)(6) of the National Labor Relations Act in view of the fact that composing room employees perform no service incident or essential to the production of a newspaper in their handling of such "bogused" material.

Statute Involved

The pertinent portions of the National Labor Relations Act, as amended, (herein referred to as the "Act") 61 Stat. 136, *et seq.*, 29 U. S. C. Supp. III, § 151, *et seq.*, are set forth in the Appendix.

Statement

In November 1947 the General Counsel of the Board, as a result of charges (R. 39-42) filed by petitioner issued a complaint (R. 43-48) in which it was alleged that the ITU and its agents, in their relations with publishers of daily newspapers throughout the United States, had engaged in activities prohibited by the Act.

Hearings were held on various dates from December 9, 1947, to May 18, 1948, following which the Trial Examiner on August 6, 1948, issued his Intermediate Report (R. 50-166) in which he made extensive findings of fact and recommended that the ITU and its agents cease and desist from certain conduct alleged by the complaint to be violative of the Act.

While the case was pending before the Board, that agency sought and obtained an injunction against the ITU under Section 10(j) of the Act restraining it from violations of the Act during the progress of the case before the Board. *Evans* v. *ITU*, 76 F. Supp. 881. Subsequently, the Court held the ITU in contempt of its decree. *Evans* v. *ITU*, 81 F. Supp. 675.

On October 28, 1949, the Board issued its Decision and Order (R. 283-299) in which it found that the ITU had violated Sections 8(b)(2) and 8(b)(1)(B) of the Act and in which it ordered the ITU to cease and desist from such violations.

In January, 1951, petitioner herein filed a petition with the United States Court of Appeals for the Seventh Circuit petitioning that Court to review, enforce in part, reverse in part and modify in part the Board's order. Case No. 10329.

Several days later the Board filed two petitions with the Court. In one it sought a decree of enforcement of its order in the case brought on charges by petitioner and in the other it sought a decree of enforcement in the case brought

against Chicago Typographical Union No. 16 and International Typographical Union which had been consolidated with the ANPA case for hearing before the Board. These cases were docketed as Nos. 10331 and 10332 in the Court below. A fourth case, No. 10356, *Union Employers Section of Printing Industry of America, Inc.* v. *National Labor Relations Board* was subsequently docketed.

The Court below heard arguments on all four cases at one time and on December 27, 1951, handed down its opinion therein. In its opinion the Court said:

> "In summary, the decision of this Court in these four cases is as follows: The petitions of the National Labor Relations Board for enforcement of its orders in cases 10331 and 10332 is granted. The orders against the respondents will be enforced. That part of the Board's decision and order in case 10329 which dismissed the charge that the ITU and its agents refused to bargain collectively in good faith is remanded to the Board for consideration and decision upon the merits of the charge. In all other respects the petitions of the moving complainants in cases 10329 and 10356 are denied."

On February 11, 1952, the Circuit Court of Appeals entered its decrees in the four cases (R. 3095).

This petition is directed only to the decree in No. 10329.

The Facts

The facts of the case are stated at length in the Intermediate Report (R. 50-166) and are summarized in the opinion of the Court below.

Briefly the facts are these:

Prior to about 1885, the ITU did not engage in bargaining with employers. It "simply adopted a scale of prices" and other conditions under which its members would work. If an employer could and would pay this scale and meet these

conditions, ITU members would work for him. If he could not or would not, no ITU member could work for him (R. 2622-2623). One of the traditions of the ITU was that its members could not work in a shop employing non-members and if a member violated this tradition he was penalized or expelled from the ITU. This violation of tradition was termed "ratting" (R. 2639). Other traditions of the ITU forbade members to work in a shop where the foreman was not a member (R. 2622-2623), or in a shop which refused to abide by the ITU's determination of the kind of work to be assigned to its members (R. 2642) or a shop which required its members to work on "struck work,"[2] or a shop which did not recognize the apprentice system of the ITU (R. 2634-2635).

Another ITU tradition is known as "reproduction" or setting "bogus."[3] This "tradition" requires the publishers of newspapers to pay substantial sums of money[4] to ITU members for work which is not intended for use in the publication of newspapers and which is utterly valueless (R. 1529-1536).

Advertisers may send advertisements to a newspaper in the form of flat copy, i.e., on paper with the advertisement typewritten or drawn by hand. In such case, the advertisement is sent to the composing room where a compositor sets it in type after which it is placed in a "form." The form

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[2] Work emanating from or going to another shop where ITU members are on strike (R. 2640).

[3] The term "reproduction" and "bogus" are used interchangeably herein and refer to the same practice or tradition. The facts relating to the "bogus" practice are set forth in the Trial Examiner's Intermediate Report (R. 143-148). In their exceptions to this Report, the parties expressed no substantial disagreement to his factual findings.

[4] The Trial Examiner found that the cost of setting "bogus" at a Chicago newspaper amounted to about $50,000 a year; at a Rochester, N.Y., newspaper to over $5,000 a year; and at a New York City newspaper to about $150,000 a year (R. 147). No exceptions were filed to his finding.

is "proofed", and then sent to the stereotype room. There, by the application of pressure, the print in the form is transferred to this cardboard known in the publishing field as a "matrix" or "mat." This matrix serves as a mold from which a metal plate is made for use on the printing press which prints the newspaper.

Advertisers frequently submit their advertisements to publishers in the form of a matrix. When an advertisement is submitted in this form, it bypasses the composing room and goes directly to the stereotype room where a plate is made to use in printing the advertisement.

The ITU's "tradition" of "setting bogus" permits the publisher to publish any advertisement submitted in the form of a matrix only on the condition that after its publication a "tear sheet" of the advertisement taken from the published newspaper be placed on the "bogus hook" in the composing room, and the advertisement thereafter be set ("bogused") by members of the ITU.

This means that the advertisement on the "hook" is set in type and placed in a form, a proof is run from the form so set, and errors are noted and corrected, just as any other non-"bogus" material would be handled. Then, after a calculation has been made of the time consumed in setting the type, the type so set is tossed into the type melting box universally called the "hell box." Compositors who set the "bogused" material are paid for their time just as they are paid for setting straight copy.

The demands of the ITU are not limited to insisting that printed words be reset. At Rochester, New York, in 1946, the union demanded that hand-lettered words be "bogused" in addition to printed words. The publisher refused to accede to the union's demands on the ground that such work fell within the photo-engravers' jurisdiction. The union struck solely on this issue and came back to work only after the publisher had acceded to its demands (R. 1554).

As pointed out supra, the cost of setting "bogus" at a single newspaper amounted to as much as $150,000 per year. The elimination of the "bogus" practice would result in the reduction of labor costs in newspaper composing rooms of from 2 to 5 percent (R. 147).

None of the work performed on "bogused" material is incident to or essential to the processes used in the printing of newspapers. The work is performed after, not prior to publication. It is not performed at publishers' requests, but solely on demand of the ITU that publishers agree to have it performed and to pay for it as a condition to obtaining a contract with the union for the performance of other work incident and essential to the printing of newspapers.

These traditions relating to the closed shop, union foremen, struck work, jurisdiction, "bogus," etc. were eventually set forth by the ITU in great detail in a written document known as its "Book of Laws"—principally in a section thereof known as the "General Laws" (R. 2625).[5] These "laws" in effect at the time of the hearing before the Board are set forth in the record at pages 1888-2021.

The General Laws of the ITU constituted a resolution by the ITU that its members could not work for any employer who did not comply with the requirements of these "laws." A member of the ITU who "ratted," i. e., worked in violation of the laws, was subject to expulsion from the ITU in which event he lost mortuary and pension rights incident to his membership and, more important, his job.[6]

Since 1944, the ITU has refused to approve any contract which did not expressly or in substance provide:

> "That the General Laws of the International Typographical Union in effect [the preceding January 1],

[5] Other sections of the Book of Laws relate primarily to matters affecting the internal organization of the union such as the tenure of officers, payment of dues, organization of subordinate local unions, etc.

[6] If an employer retained a "rat" in his employ, all other ITU men were obligated by the laws to cease work.

not in conflict with this contract shall govern the relations between the parties on conditions not specifically enumerated herein." (R. 1242-1247).

As was stated in the opinion of the Court below, the Constitution, By-Laws, General Laws and Convention Laws of the ITU gave it "absolute control * * * over its subordinate locals and members".

The Court's opinion continues:

"Upon passage of the Taft-Hartley Act in June, 1947, to become effective August 27, 1947, the ITU at once launched a campaign for the apparent purpose of expressing its disapproval and defiance of the Act and for the further purpose of instructing its subordinate locals and members on methods of avoiding the impact of the various provisions of the Act on the traditional practices and policies of the ITU. In fact, while the Act was still under consideration by Congress, the ITU clearly indicated what was to come in the event the Act was passed. In the March 1947 issue of The Typographical Journal its readers were told:

" 'For nearly a century—long before there was any thought of laws to 'legalize' the closed shop—the International Typographical Union operated on the closed shop principle. It has been the accepted practice in the printing industry. * * * It will continue to so operate in spite of misguided or prejudiced legislators; their influential backers, or any unconstitutional 'laws' enemies of labor may be able to put on the books.

" ' * * * It is the inalienable right of a free people to refuse to work under intolerable conditions. It is intolerable and unthinkable that union printers would work with non-union men under conditions fostered by the 'open shop.' When confronted with that choice members of the I.T.U. will do what comes naturally.' " (R. 1793, 1794, 3060).

In May 1947, Woodruff Randolph, President of the ITU, testifying before a Congressional Committee said:

"At no time has the International Typographical Union or any local thereof operated on other than a

closed shop basis and whether it can make contracts thereof or not, it will continue to function on that basis." (R. 2686-2687).

In the July 1947 issue of The Typographical Journal, the first issue after the passage of the Taft-Hartley Act, President Randolph wrote:

"The Law as Adopted is Unenforceable

"The old adage that you can lead a mule to water but you cannot make him drink applies as well as in this case. It is recognized that collective bargaining is not only a good thing, but an absolute necessity. So is water to a mule, but there are times when he will not drink.

"This is one of the times when organized labor approaches collective bargaining with at least a mulish disposition. So far as the Typographical Union is concerned, we do not intend to have any of our rights or prerogatives, enjoyed for a hundred years, set aside by laws adopted under the lash of party leadership in Congress inspired by representatives of big business whose aim is to wreck organized labor.

* * * * * * *

"* * * It is a safe prediction that if the Supreme Court of the United States does not set Congress right, organized labor will do the job the hard way.

* * * * * * *

"There is no law that can compel our members to work for our employers under any conditions not acceptable to us. If we cannot make a contract for a closed-shop, we need not make a contract. If the conditions prevailing in a shop are not to our liking, we need not work in that shop." (R. 1795-1796).

By a series of bulletins which were sent to all subordinate unions, beginning about July 1, 1947, the latter were advised of and directed to adhere to a common policy which was

to be followed by the ITU and all of its locals (R. 2022-2045, 2408-2413). At its annual convention of August 16 to 22, 1947, the ITU redefined its purpose to maintain its traditional trade union practices in the face of the amendments to the Act, and clarified the policy with which its locals would arm themselves in their relations with employers. This policy was expressed in a resolution to revise Article III, Section 1, of the General Laws (R. 67-69, 2012-2014, 3059, 3064).

By carrying out this policy the ITU and/or its subordinate locals violated Sections 8(b)(1)(B), 8(b)(2) and 8(b)(3) of the Act resulting in cease and desist orders issued by the Board (R. 297-298, 347-349) in accordance with recommendations of its Trial Examiner (R. 159-161, 330-333) and enforced by the Court below (R. 3094).

The Convention of August 1947 which adopted the so-called "no-contract" policy (R. 2075, line 9) also gave the President and Executive Council additional power over subordinate unions and individual members. In the words of the Court below:

> "It is significant that the same convention amended § 43 of Article IV of the By-Laws of the ITU by giving the Executive Council the right to summarily *expel* (instead of suspend) any subordinate union, member or members refusing to accept and observe a decision of the Executive Council. Section 2 of Article II of the General Laws was also amended to prohibit any local union from signing any contract guaranteeing its members to work 'unless such contract is in accordance with International law and *policy* and approved *as such* by the International President.' (Our emphasis.)" (R. 3065).

The President and Executive Council used this additional power together with powers already existing to coerce and restrain ITU members to adhere to the ITU policy and thereby to violate the Act.

An instance of such restraint and coercion occurred during negotiations at San Francisco. There Local No. 21 agreed on a substantial wage increase with the commercial printers and evidenced their agreement by a letter. (R. 2415-2416).[7] The local was about to write a similar letter to newspaper publishers (R. 2408) when the officers and members of Local No. 21 received a telegram from the Executive Council of the ITU mandating the officers and members of Local No. 21 not to enter into a similar arrangement with the newspaper publishers and threatening expulsion for failure to comply with the mandate (R. 2415). The mandate was obeyed. (R. 1236-1238).

For many years members of respondent ITU have been required to contribute 2½% of their earnings (temporarily 2%) to the union's pension and mortuary fund (Constitution, Article IX, Section 1; R. 1612-1613). Under ITU law, members who are expelled lose these rights and are not permitted to recover monies paid into the fund (R. 1259); members who are suspended also lose valuable rights in the fund (R. 1259). ITU members have a substantial financial interest in preserving their status as members in good standing, and this financial interest is utilized to compel adherence to ITU laws. This is illus-

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[7] In Postcard Bulletin No. 108 (R. 2408), subordinate unions and their members were warned that an exchange of letters with employers violated ITU policy. The Bulletin read as follows:

"Please Post Postcard Bulletin No. 108

T-H-L Point No. 26

Exchanging Letters with Employers Dangerous

In Miami, Florida, an exchange of letters by the two unions and the newspapers results in the unions being outsmarted by the publishers. The unions are in an unfavorable position and contrary to I.T.U. policy because the offer and acceptance will be regarded as a contract.

In San Francisco similar results occurred with regard to the job scale and the same is indicated to be imminent in newspaper scale negotiations."

trated by the negotiations at South Bend where, as the Trial Examiner found, the local negotiating committee stated it could not enter into a contract because such action might "entail loss of membership, old age and death benefits" (R. 92).

Specification of Errors to Be Urged

The Court of Appeals for the Seventh Circuit erred:

1. In holding that the proviso to Section 8(b)(1)(A) authorized the ITU to threaten its members with loss of union membership including pension and mortuary rights incidental to such membership unless its members cooperated in the ITU's illegal "bargaining" policy.

2. In failing to hold that the ITU's demands for payment for setting "bogus" violated Section 8(b)(6) of the Act.

Reasons Relied On for Granting the Writ

1. *This case raises important questions of federal law which have not been, but should be, settled by this Court.*

This case involves the construction and application of Section 8(b)(1)(A) and Section 8(b)(6) of the Act. As of the date this petition was prepared neither of these Sections had been considered or passed upon by this Court. However, as will be shown, *infra*, the decision of the Court below in its interpretation of Section 8(b)(1)(A) conflicts with the decision of this Court in *N.L.R.B.* v. *Virginia Electric & Power Co.*, 314 U. S. 469.[8]

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[8] This petition was filed in typewritten form on May 6. Since its filing, but before its printing, the United States Court of Appeals for the Sixth Circuit, on May 9, in *Gamble Enterprises, Inc.*, v. *National Labor Relations Board*, No. 11405, reached a decision on the meaning of Section 8(b)(6) of the Act directly contrary to that reached by the lower court in this case.

2. The Court below miscontrued the meaning of the proviso to Section 8(b)(1)(A) of the Act when it held that this proviso immunized membership rules requiring illegal acts.

Section 8(b)(1)(A) of the Act makes it an unfair labor practice for a labor organization to restrain or coerce

> "(A) employees in the exercise of the rights guaranteed in Section 7: *Provided*, that this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein."

Section 7 of the Act provides:

> "Rights of Employees
>
> "Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3)."

The Court below found that the ITU's threats to expel members who did not participate in its illegal objectives restrained and coerced those members in the exercise of their rights under Section 7, but further found that the ITU was protected in such action by reason of the proviso to Section 8(b)(1)(A).

The restraint and coercion from which rank and file employees suffer as a result of the ITU's policy against the kind of bargaining required by Section 8(b)(3) and 8(d) does not arise from the rules of the union conferring power on the Executive Council to expel any member or local

which refuses to abide by its decisions. Restraint and coercion arises from the no-collective-bargaining rules adopted at the 1947 convention (By-Laws, Article IV, Section 43). But these are not rules respecting the acquisition or retention of membership in the union and even if, as they might be, formally cast in such a form, the proviso was obviously not designed to immunize such a defeat of the basic statutory right to collective bargaining afforded by Section 7 to all employees in the various bargaining units, union and non-union alike.

In *N. L. R. B.* v. *Virginia Electric & Power Co.*, this Court had occasion to pass upon a controversy wherein it was claimed an employer was protected under the First Amendment from an order of the Board holding that it had violated Section 7 of the Act. Holding that speech is protected by the First Amendment, the Court nevertheless at p. 477 said:

> "Neither the Act nor the Board's order here enjoins the employer from expressing its view on labor policies or problems, nor is a penalty imposed upon it because of any utterances which it has made. *The sanctions of the Act are imposed not in punishment of the employer but for the protection of the employees.* The employer in this case is as free now as ever to take any side it may choose on this controversial issue. But certainly conduct, though evidenced in part by speech, may amount in connection with other circumstances to coercion within the meaning of the Act. If the total activities of an employer restrain or coerce his employees in their free choice, then those employees are entitled to the protection of the Act. And in determining whether a course of conduct amounts to restraint or coercion, pressure exerted vocally by the employer may no more be disregarded than pressure exerted in other ways." (Emphasis supplied.)

The emphasized portion in the *Virginia Electric & Power* opinion might well be paraphrased to read in part:

> The sanctions of the Act are imposed not in punishment of the labor organization but for the protection of the employees.

Because the decision of the Court below is in conflict with the decision of this Court in the *Virginia Electric & Power* case, it should be reviewed by this Court.

3. *It is of vital importance to the public interest that this Court give an authoritative construction to Section 8(b)(6) of the Act.*

As a result of the narrow construction which the Court below has given to Section 8(b)(6) of the Act, it has in effect approved a Board interpretation of general application to industry which has rendered the practical effect of this subsection null and void. See *Teamsters Local No. 294 and Conway's Express*, 87 NLRB 972, affirmed in *Conway's Express* v. *N. L. R. B.*, 29 LRRM 2617 (CA 2, March 24, 1952); also *Musicians Local 24 and Gamble Enterprises, Inc.*, 92 NLRB No. 210.

Section 8(b)(6) makes it an unfair labor practice for a labor organization

> "to cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed."

The record in this case shows that the work performed on bogus is not service incident to or essential to the production of a newspaper; that it is work performed after the newspaper has been printed and in many cases long after the newspaper has been printed and that it is performed solely because otherwise the publisher could not obtain a contract with the union or an agreement with the union to have his essential composing room work performed.

While the *Conway's Express* case arose under the Act before it was amended nevertheless the *Musicians Union*

case arose under the Act since it was amended. In the latter case the Board said:

> "In our opinion, Section 8(b)(6) was not intended to reach cases where a labor organization seeks actual employment for its members, even in situations where the employer does not want, does not need, and is not willing to accept such services. Whether it is desirable that such objective should be made the subject of an unfair labor practice is a matter for further congressional action, but we believe that such objective is not proscribed by the limited provisions of Section 8(b)(6)."

Thus it can be seen from a consideration of the *Conway* case and the *Musicians* case that the Board still adheres to an interpretation it made prior to the amendment of the Act and that the lower Court has agreed with that interpretation.

In the instant case the record shows that the employers do not want, do not need, and are not willing to pay for bogus and only consent to the union demands because otherwise they could not obtain printers to perform the work which they do want and do need.

The lower Court found that the pay for setting bogus was only for the time the employee actually worked in setting the bogus

> "amounting to approximately 5% of his total working time."

The Court further said

> "He was a regular employee not merely hired to set 'bogus' but hired to do composition work which the employer requires. While the 'bogus' was not ordinarily used by the employer the necessary work to compose it was actually done by the employee."

On the same theory the Stereotypers Union might require that all mats coming from outside the office of publication which it processes in part in the course of publication should be reproduced by its members as a condition to that union's agreement to permit its members to work for a publisher.

Or, the Photo-engravers Union might insist that all pictures which come to a newspaper from outside sources, whether in plate form or matrix form, must be reproduced by members of that union as a condition incident to a union agreement to permit its members to work for a publisher.

The illustrations of the vice of the Board's present interpretation of Section 8(b)(6) as stated in the *Musicians* case, *supra*, and as upheld by the lower Court in this case could be continued *ad infinitum*.

It is respectfully submitted that Section 8(b)(6) was written to cure precisely the type of featherbedding demonstrated in this case.

The decision by the Court below that Section 8(b)(6) is not violated when the unnecessary work is performed by regular employees hired to do other work, even though the unnecessary work is agreed to under duress by the employer, should be reviewed by this Court.

4. *The Court below erred in referring to legislative history in an effort to give Section 8(b)(6) a meaning other than that clearly expressed in the statute.*

In its construction of Section 8(b)(6) the lower Court disregarded the plain language of the statute and relied upon certain portions of legislative history to reach an interpretation of the statute similar to that theretofore reached by the National Labor Relations Board, which in turn had relied upon legislative history to avoid the plain meaning of the statute.

The decision of the Court below is therefore in conflict with decisions of this Court, holding that there is no need

to refer to legislative history when the statutory language is plain. *Packard Motor Car Co.* v. *N.L.R.B.*, 330 U. S. 485, 492 (1947); *Gemsco, Inc.* v. *Walling*, 324 U. S. 244, 260 (1945). Cf. also Mr. Justice Jackson, concurring opinion in *Schwegmann* v. *Calvert Distillers Corp.*, 341 U. S. 384, 395 (1951), where he said:

> "Resort to legislative history is only justified where the face of the Act is inescapably ambiguous, and then I think we should not go beyond Committee reports, which presumably are well considered and carefully prepared."

It is respectfully submitted, as has been said by this Court, that such aids as may be obtained from legislative history are only admissible to solve doubt and not to create it. *Railroad Commission* v. *Chicago, B. & Q. R. Co.*, 257 U. S. 563, 589 (1922); *United States* v. *Shreveport Grain & Elevator Co.*, 287 U. S. 77, 83 (1932); also Cf. *Sutherland Statutory Construction* §4702 (3rd ed. 1943).

It has frequently been held by this Court that debates in Congress such as those which form the sole basis for the decision below are inappropriate guides to the ascertainment of the meaning and purpose of the lawmaking body—particularly so when the statutory language is clear. *Aldridge* v. *Williams*, 3 Howard 9 (1945); *Duplex Printing Press* v. *Deering*, 254 U. S. 443, 474 (1921); *Binns* v. *United States*, 194 U. S. 486, 495 (1904).

In construing this statute the lower Court ignored the applicable decisions of this Court in respect of the use of legislative history and for that reason this Court should review its decision.

Conclusion

For these reasons, it is respectfully submitted that this petition for a writ of certiorari should be granted.

Respectfully submitted,

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[PUBLIC LAW 101—80TH CONGRESS]
[CHAPTER 120—1ST SESSION]
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AN ACT

To amend the National Labor Relations Act, to provide additional facilities for the mediation of labor disputes affecting commerce, to equalize legal responsibilities of labor organizations and employers, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE AND DECLARATION OF POLICY

SECTION 1. (a) This Act may be cited as the "Labor Management Relations Act, 1947".

(b) Industrial strife which interferes with the normal flow of commerce and with the full production of articles and commodities for commerce, can be avoided or substantially minimized if employers, employees, and labor organizations each recognize under law one another's legitimate rights in their relations with each other, and above all recognize under law that neither party has any right in its relations with any other to engage in acts or practices which jeopardize the public health, safety, or interest.

It is the purpose and policy of this Act, in order to promote the full flow of commerce, to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce.

TITLE I—AMENDMENT OF NATIONAL LABOR RELATIONS ACT

SEC. 101. The National Labor Relations Act is hereby amended to read as follows:

"FINDINGS AND POLICIES

"SECTION 1. The denial by some employers of the right of employees to organize and the refusal by some employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or

goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

"The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

"Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

"Experience has further demonstrated that certain practices by some labor organizations, their officers, and members have the intent or the necessary effect of burdening or obstructing commerce by preventing the free flow of goods in such commerce through strikes and other forms of industrial unrest or through concerted activities which impair the interest of the public in the free flow of such commerce. The elimination of such practices is a necessary condition to the assurance of the rights herein guaranteed.

"It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

"DEFINITIONS

"SEC. 2. When used in this Act—

"(1) The term 'person' includes one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

"(2) The term 'employer' includes any person acting as an agent of an employer, directly or indirectly, but shall not include the United States or any wholly owned Government corporation, or any Federal Reserve Bank, or any State or political subdivision thereof, or any corporation or association operating a hospital, if no part of the net earnings inures to the benefit of any private shareholder or individual, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

"(3) The term 'employee' shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act

explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any individual having the status of an independent contractor, or any individual employed as a supervisor, or any individual employed by an employer subject to the Railway Labor Act, as amended from time to time, or by any other person who is not an employer as herein defined.

"(4) The term 'representative' includes any individual or labor organization.

"(5) The term 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

"(6) The term 'commerce' means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

"(7) The term 'affecting commerce' means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

"(8) The term 'unfair labor practice' means any unfair labor practice listed in section 8.

"(9) The term 'labor dispute' includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

"(10) The term 'National Labor Relations Board' means the National Labor Relations Board provided for in section 3 of this Act.

"(11) The term 'supervisor' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

"(12) The term 'professional employee' means—

"(a) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance;

(iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes; or

"(b) any employee, who (i) has completed the courses of specialized intellectual instruction and study described in clause (iv) of paragraph (a), and (ii) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in paragraph (a).

"(13) In determining whether any person is acting as an 'agent' of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

"NATIONAL LABOR RELATIONS BOARD.

"SEC. 3. (a) The National Labor Relations Board (hereinafter called the 'Board') created by this Act prior to its amendment by the Labor Management Relations Act, 1947, is hereby continued as an agency of the United States, except that the Board shall consist of five instead of three members, appointed by the President by and with the advice and consent of the Senate. Of the two additional members so provided for, one shall be appointed for a term of five years and the other for a term of two years. Their successors, and the successors of the other members, shall be appointed for terms of five years each, excepting that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as Chairman of the Board. Any member of the Board may be removed by the President, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause.

"(b) The Board is authorized to delegate to any group of three or more members any or all of the powers which it may itself exercise. A vacancy in the Board shall not impair the right of the remaining members to exercise all of the powers of the Board, and three members of the Board shall, at all times, constitute a quorum of the Board, except that two members shall constitute a quorum of any group designated pursuant to the first sentence hereof. The Board shall have an official seal which shall be judicially noticed.

"(c) The Board shall at the close of each fiscal year make a report in writing to Congress and to the President stating in detail the cases it has heard, the decisions it has rendered, the names, salaries, and duties of all employees and officers in the employ or under the supervision of the Board, and an account of all moneys it has disbursed.

"(d) There shall be a General Counsel of the Board who shall be appointed by the President, by and with the advice and consent of the Senate, for a term of four years. The General Counsel of the Board shall exercise general supervision over all attorneys employed by the Board (other than trial examiners and legal assistants to Board

members), and over the officers and employees in the regional offices. He shall have final authority, on behalf of the Board, in respect of the investigation of charges and issuance of complaints under section 10, and in respect of the prosecution of such complaints before the Board, and shall have such other duties as the Board may prescribe or as may be provided by law.

"SEC. 4. (a) Each member of the Board and the General Counsel of the Board shall receive a salary of $12,000 a year, shall be eligible for reappointment, and shall not engage in any other business, vocation, or employment. The Board shall appoint an executive secretary, and such attorneys, examiners, and regional directors, and such other employees as it may from time to time find necessary for the proper performance of its duties. The Board may not employ any attorneys for the purpose of reviewing transcripts of hearings or preparing drafts of opinions except that any attorney employed for assignment as a legal assistant to any Board member may for such Board member review such transcripts and prepare such drafts. No trial examiner's report shall be reviewed, either before or after its publication, by any person other than a member of the Board or his legal assistant, and no trial examiner shall advise or consult with the Board with respect to exceptions taken to his findings, rulings, or recommendations. The Board may establish or utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys appointed under this section may, at the direction of the Board, appear for and represent the Board in any case in court. Nothing in this Act shall be construed to authorize the Board to appoint individuals for the purpose of conciliation or mediation, or for economic analysis.

"(b) All of the expenses of the Board, including all necessary traveling and subsistence expenses outside the District of Columbia incurred by the members or employees of the Board under its orders, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Board or by any individual it designates for that purpose.

"SEC. 5. The principal office of the Board shall be in the District of Columbia, but it may meet and exercise any or all of its powers at any other place. The Board may, by one or more of its members or by such agents or agencies as it may designate, prosecute any inquiry necessary to its functions in any part of the United States. A member who participates in such an inquiry shall not be disqualified from subsequently participating in a decision of the Board in the same case.

"SEC. 6. The Board shall have authority from time to time to make, amend, and rescind, in the manner prescribed by the Administrative Procedure Act, such rules and regulations as may be necessary to carry out the provisions of this Act.

"RIGHTS OF EMPLOYEES

"SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected

by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3).

"UNFAIR LABOR PRACTICES

"SEC. 8. (a) It shall be an unfair labor practice for an employer—

"(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

"(2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided*, That subject to rules and regulations made and published by the Board pursuant to section 6, an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay;

"(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this Act, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in section 8 (a) of this Act as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective-bargaining unit covered by such agreement when made; and (ii) if, following the most recent election held as provided in section 9 (e) the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to authorize such labor organization to make such an agreement: *Provided further*, That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

"(4) to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act;

"(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a).

"(b) It shall be an unfair labor practice for a labor organization or its agents—

"(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances;

"(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a) (3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

"(3) to refuse to bargain collectively with an employer, provided it is the representative of his employees subject to the provisions of section 9 (a);

"(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is: (A) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person; (B) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9; (C) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 9; (D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work: *Provided*, That nothing contained in this subsection (b) shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this Act;

"(5) to require of employees covered by an agreement authorized under subsection (a) (3) the payment, as a condition precedent to becoming a member of such organization, of a fee in an amount which the Board finds excessive or discriminatory under all the circumstances. In making such a finding, the Board shall consider, among other relevant factors, the practices and customs of labor organizations in the particular industry, and the wages currently paid to the employees affected; and

"(6) to cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed.

"(c) The expressing of any views, argument, or opinion, or th dissemination thereof, whether in written, printed, graphic, or visua form, shall not constitute or be evidence of an unfair labor practic under any of the provisions of this Act, if such expression contains n threat of reprisal or force or promise of benefit.

"(d) For the purposes of this section, to bargain collectively is th performance of the mutual obligation of the employer and the repre sentative of the employees to meet at reasonable times and confer i good faith with respect to wages, hours, and other terms and condition of employment, or the negotiation of an agreement, or any questio arising thereunder, and the execution of a written contract incorpo rating any agreement reached if requested by either party, but suc obligation does not compel either party to agree to a proposal or requir the making of a concession: *Provided*, That where there is in effect collective-bargaining contract covering employees in an industr affecting commerce, the duty to bargain collectively shall also mea that no party to such contract shall terminate or modify such contract unless the party desiring such termination or modification—

"(1) serves a written notice upon the other party to the contrac of the proposed termination or modification sixty days prior t the expiration date thereof, or in the event such contract contain no expiration date, sixty days prior to the time it is proposed t make such termination or modification;

"(2) offers to meet and confer with the other party for th purpose of negotiating a new contract or a contract containin the proposed modifications;

"(3) notifies the Federal Mediation and Conciliation Servic within thirty days after such notice of the existence of a dispute and simultaneously therewith notifies any State or Territoria agency established to mediate and conciliate disputes within th State or Territory where the dispute occurred, provided no agree ment has been reached by that time; and

"(4) continues in full force and effect, without resorting t strike or lock-out, all the terms and conditions of the existin contract for a period of sixty days after such notice is given o until the expiration date of such contract, whichever occurs later

The duties imposed upon employers, employees, and labor organization by paragraphs (2), (3), and (4) shall become inapplicable upon a intervening certification of the Board, under which the labor organiza tion or individual, which is a party to the contract, has been supersede as or ceased to be the representative of the employee subject to th provisions of section 9 (a), and the duties so imposed shall not b construed as requiring either party to discuss or agree to any modifica tion of the terms and conditions contained in a contract for a fixe period, if such modification is to become effective before such terms an conditions can be reopened under the provisions of the contract. An employee who engages in a strike within the sixty-day period specifie in this subsection shall lose his status as an employee of the employe engaged in the particular labor dispute, for the purposes of sections 8 9, and 10 of this Act, as amended, but such loss of status for suc employee shall terminate if and when he is reemployed by suc employer.

"SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: *Provided further*, That the bargaining representative has been given opportunity to be present at such adjustment.

"(b) The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof: *Provided*, That the Board shall not (1) decide that any unit is appropriate for such purposes if such unit includes both professional employees and employees who are not professional employees unless a majority of such professional employees vote for inclusion in such unit; or (2) decide that any craft unit is inappropriate for such purposes on the ground that a different unit has been established by a prior Board determination, unless a majority of the employees in the proposed craft unit vote against separate representation or (3) decide that any unit is appropriate for such purposes if it includes, together with other employees, any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises; but no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards.

"(c) (1) Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board—

"(A) by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a substantial number of employees (i) wish to be represented for collective bargaining and that their employer declines to recognize their representative as the representative defined in section 9 (a), or (ii) assert that the individual or labor organization, which has been certified or is being currently recognized by their employer as the bargaining representative, is no longer a representative as defined in section 9 (a); or

"(B) by an employer, alleging that one or more individuals or labor organizations have presented to him a claim to be recognized as the representative defined in section 9 (a);

the Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice. Such hearing may be conducted by an officer or employee of the regional office, who shall not make any recommendations with respect thereto.

If the Board finds upon the record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof.

"(2) In determining whether or not a question of representation affecting commerce exists, the same regulations and rules of decision shall apply irrespective of the identity of the persons filing the petition or the kind of relief sought and in no case shall the Board deny a labor organization a place on the ballot by reason of an order with respect to such labor organization or its predecessor not issued in conformity with section 10 (c).

"(3) No election shall be directed in any bargaining unit or any subdivision within which, in the preceding twelve-month period, a valid election shall have been held. Employees on strike who are not entitled to reinstatement shall not be eligible to vote. In any election where none of the choices on the ballot receives a majority, a run-off shall be conducted, the ballot providing for a selection between the two choices receiving the largest and second largest number of valid votes cast in the election.

"(4) Nothing in this section shall be construed to prohibit the waiving of hearings by stipulation for the purpose of a consent election in conformity with regulations and rules of decision of the Board.

"(5) In determining whether a unit is appropriate for the purposes specified in subsection (b) the extent to which the employees have organized shall not be controlling.

"(d) Whenever an order of the Board made pursuant to section 10 (c) is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under section 10 (e) or 10 (f), and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

"(e) (1) Upon the filing with the Board by a labor organization, which is the representative of employees as provided in section 9 (a), of a petition alleging that 30 per centum or more of the employees within a unit claimed to be appropriate for such purposes desire to authorize such labor organization to make an agreement with the employer of such employees requiring membership in such labor organization as a condition of employment in such unit, upon an appropriate showing thereof the Board shall, if no question of representation exists, take a secret ballot of such employees, and shall certify the results thereof to such labor organization and to the employer.

"(2) Upon the filing with the Board, by 30 per centum or more of the employees in a bargaining unit covered by an agreement between their employer and a labor organization made pursuant to section 8 (a) (3) (ii), of a petition alleging they desire that such authority be rescinded, the Board shall take a secret ballot of the employees in such unit, and shall certify the results thereof to such labor organization and to the employer.

"(3) No election shall be conducted pursuant to this subsection in any bargaining unit or any subdivision within which, in the preceding twelve-month period, a valid election shall have been held.

"(f) No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, no petition under section 9 (e) (1) shall be entertained, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, unless such labor organization and any national or international labor organization of which such labor organization is an affiliate or constituent unit (A) shall have prior thereto filed with the Secretary of Labor copies of its constitution and bylaws and a report, in such form as the Secretary may prescribe, showing—

"(1) the name of such labor organization and the address of its principal place of business;

"(2) the names, titles, and compensation and allowances of its three principal officers and of any of its other officers or agents whose aggregate compensation and allowances for the preceding year exceeded $5,000, and the amount of the compensation and allowances paid to each such officer or agent during such year;

"(3) the manner in which the officers and agents referred to in clause (2) were elected, appointed, or otherwise selected;

"(4) the initiation fee or fees which new members are required to pay on becoming members of such labor organization;

"(5) the regular dues or fees which members are required to pay in order to remain members in good standing of such labor organization;

"(6) a detailed statement of, or reference to provisions of its constitution and bylaws showing the procedure followed with respect to, (a) qualification for or restrictions on membership, (b) election of officers and stewards, (c) calling of regular and special meetings, (d) levying of assessments, (e) imposition of fines, (f) authorization for bargaining demands, (g) ratification of contract terms, (h) authorization for strikes, (i) authorization for disbursement of union funds, (j) audit of union financial transactions, (k) participation in insurance or other benefit plans, and (l) expulsion of members and the grounds therefor;

and (B) can show that prior thereto it has—

"(1) filed with the Secretary of Labor, in such form as the Secretary may prescribe, a report showing all of (a) its receipts of any kind and the sources of such receipts, (b) its total assets and liabilities as of the end of its last fiscal year, (c) the disbursements made by it during such fiscal year, including the purposes for which made; and

"(2) furnished to all of the members of such labor organization copies of the financial report required by paragraph (1) hereof to be filed with the Secretary of Labor.

"(g) It shall be the obligation of all labor organizations to file annually with the Secretary of Labor, in such form as the Secretary of Labor may prescribe, reports bringing up to date the information required to be supplied in the initial filing by subsection (f) (A) of this section, and to file with the Secretary of Labor and furnish to its members annually financial reports in the form and manner prescribed in subsection (f) (B). No labor organization shall be eligible for certification under this section as the representative of any employees, no petition under section 9 (e) (1) shall be entertained, and no complaint shall issue under section 10 with respect to a charge filed by

a labor organization unless it can show that it and any national o international labor organization of which it is an affiliate or constituen unit has complied with its obligation under this subsection.

"(h) No investigation shall be made by the Board of any questio affecting commerce concerning the representation of employees, raise by a labor organization under subsection (c) of this section, no petitio under section 9 (e) (1) shall be entertained, and no complaint shall b issued pursuant to a charge made by a labor organization under sub section (b) of section 10, unless there is on file with the Board a affidavit executed contemporaneously or within the preceding twelv month period by each officer of such labor organization and the officer of any national or international labor organization of which it is a affiliate or constituent unit that he is not a member of the Communis Party or affiliated with such party, and that he does not believe in, an is not a member of or supports any organization that believes in o teaches, the overthrow of the United States Government by force or b any illegal or unconstitutional methods. The provisions of sectio 35 A of the Criminal Code shall be applicable in respect to such affidavits.

"PREVENTION OF UNFAIR LABOR PRACTICES

"SEC. 10. (a) The Board is empowered, as hereinafter provided, t prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise: *Provided*, That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this Act or has received a construction inconsistent therewith.

"(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint: *Provided*, That no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made, unless the person aggrieved thereby was prevented from filing such charge by reason of service in the armed forces, in which event the six-month period shall be computed from the day of his discharge. Any such complaint may be amended by the member, agent, or agency conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear

in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent, or agency conducting the hearing or the Board, any other person may be allowed to intervene in the said proceeding and to present testimony. Any such proceeding shall, so far as practicable, be conducted in accordance with the rules of evidence applicable in the district courts of the United States under the rules of civil procedure for the district courts of the United States, adopted by the Supreme Court of the United States pursuant to the Act of June 19, 1934 (U. S. C., title 28, secs. 723–B, 723–C).

"(c) The testimony taken by such member, agent, or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act: *Provided*, That where an order directs reinstatement of an employee, back pay may be required of the employer or labor organization, as the case may be, responsible for the discrimination suffered by him: *And provided further*, That in determining whether a complaint shall issue alleging a violation of section 8 (a) (1) or section 8 (a) (2), and in deciding such cases, the same regulations and rules of decision shall apply irrespective of whether or not the labor organization affected is affiliated with a labor organization national or international in scope. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If upon the preponderance of the testimony taken the Board shall not be of the opinion that the person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint. No order of the Board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any back pay, if such individual was suspended or discharged for cause. In case the evidence is presented before a member of the Board, or before an examiner or examiners thereof, such member, or such examiner or examiners, as the case may be, shall issue and cause to be served on the parties to the proceeding a proposed report, together with a recommended order, which shall be filed with the Board, and if no exceptions are filed within twenty days after service thereof upon such parties, or within such further period as the Board may authorize, such recommended order shall become the order of the Board and become effective as therein prescribed.

"(d) Until a transcript of the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

"(e) The Board shall have power to petition any circuit court of appeals of the United States (including the United States Court of Appeals for the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the District Court of the United States for the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceedings, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its members, agent, or agency, and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

"(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the United States Court of Appeals for the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved

party shall file in the court a transcript of the entire record in the proceeding, certified by the Board, including the pleading and testimony upon which the order complained of was entered, and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; the findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive.

"(g) The commencement of proceedings under subsection (e) or (f) of this section shall not, unless specifically ordered by the court, operate as a stay of the Board's order.

"(h) When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part an order on the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the Act entitled 'An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes', approved March 23, 1932 (U. S. C., Supp. VII, title 29, secs. 101–115).

"(i) Petitions filed under this Act shall be heard expeditiously, and if possible within ten days after they have been docketed.

"(j) The Board shall have power, upon issuance of a complaint as provided in subsection (b) charging that any person has engaged in or is engaging in an unfair labor practice, to petition any district court of the United States (including the District Court of the United States for the District of Columbia), within any district wherein the unfair labor practice in question is alleged to have occurred or wherein such person resides or transacts business, for appropriate temporary relief or restraining order. Upon the filing of any such petition the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper.

"(k) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) (D) of section 8 (b), the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen, unless, within ten days after notice that such charge has been filed, the parties to such dispute submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute. Upon compliance by the parties to the dispute with the decision of the Board or upon such voluntary adjustment of the dispute, such charge shall be dismissed.

"(l) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) (A), (B), or (C) of section 8 (b), the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe

such charge is true and that a complaint should issue, he shall, on behalf of the Board, petition any district court of the United States (including the District Court of the United States for the District of Columbia) within any district where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein such person resides or transacts business, for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law: *Provided further*, That no temporary restraining order shall be issued without notice unless a petition alleges that substantial and irreparable injury to the charging party will be unavoidable and such temporary restraining order shall be effective for no longer than five days and will become void at the expiration of such period. Upon filing of any such petition the courts shall cause notice thereof to be served upon any person involved in the charge and such person, including the charging party, shall be given an opportunity to appear by counsel and present any relevant testimony: *Provided further*, That for the purposes of this subsection district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in promoting or protecting the interests of employee members. The service of legal process upon such officer or agent shall constitute service upon the labor organization and make such organization a party to the suit. In situations where such relief is appropriate the procedure specified herein shall apply to charges with respect to section 8 (b) (4) (D).

"INVESTIGATORY POWERS

"SEC. 11. For the purpose of all hearings and investigations, which, in the opinion of the Board, are necessary and proper for the exercise of the powers vested in it by section 9 and section 10—

"(1) The Board, or its duly authorized agents or agencies, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question. The Board, or any member thereof, shall upon application of any party to such proceedings, forthwith issue to such party subpenas requiring the attendance and testimony of witnesses or the production of any evidence in such proceeding or investigation requested in such application. Within five days after the service of a subpena on any person requiring the production of any evidence in his possession or under his control, such person may petition the Board to revoke, and the Board shall revoke, such subpena if in its opinion the evidence whose production is required does not relate to any matter under investigation, or any matter in question in such proceedings, or if in its opinion such subpena does not describe with sufficient particularity the evidence whose production is required. Any member of the Board, or any agent or agency designated by the Board for such purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. Such attendance of witnesses and the production of such evidence may be required from any place in the United States or any

Territory or possession thereof, at any designated place of hearing.

"(2) In case of contumacy or refusal to obey a subpena issued to any person, any district court of the United States or the United States courts of any Territory or possession, or the District Court of the United States for the District of Columbia, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Board shall have jurisdiction to issue to such person an order requiring such person to appear before the Board, its member, agent, or agency, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

"(3) No person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to the subpena of the Board, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

"(4) Complaints, orders, and other process and papers of the Board, its member, agent, or agency, may be served either personally or by registered mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return by the individual so serving the same setting forth the manner of such service shall be proof of the same, and the return post office receipt or telegraph receipt therefor when registered and mailed or telegraphed as aforesaid shall be proof of service of the same. Witnesses summoned before the Board, its member, agent, or agency, shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

"(5) All process of any court to which application may be made under this Act may be served in the judicial district wherein the defendant or other person required to be served resides or may be found.

"(6) The several departments and agencies of the Government, when directed by the President, shall furnish the Board, upon its request, all records, papers, and information in their possession relating to any matter before the Board.

"SEC. 12. Any person who shall willfully resist, prevent, impede, or interfere with any member of the Board or any of its agents or agencies in the performance of duties pursuant to this Act shall be punished by a fine of not more than $5,000 or by imprisonment for not more than one year, or both.

"LIMITATIONS

"SEC. 13. Nothing in this Act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or

diminish in any way the right to strike, or to affect the limitations or qualifications on that right.

"SEC. 14. (a) Nothing herein shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization, but no employer subject to this Act shall be compelled to deem individuals defined herein as supervisors as employees for the purpose of any law, either national or local, relating to collective bargaining.

"(b) Nothing in this Act shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law.

"SEC. 15. Wherever the application of the provisions of section 272 of chapter 10 of the Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States', approved July 1, 1898, and Acts amendatory thereof and supplementary thereto (U. S. C., title 11, sec. 672), conflicts with the application of the provisions of this Act, this Act shall prevail: *Provided*, That in any situation where the provisions of this Act cannot be validly enforced, the provisions of such other Acts shall remain in full force and effect.

"SEC. 16. If any provision of this Act, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

"SEC. 17. This Act may be cited as the 'National Labor Relations Act'."

EFFECTIVE DATE OF CERTAIN CHANGES

SEC. 102. No provision of this title shall be deemed to make an unfair labor practice any act which was performed prior to the date of the enactment of this Act which did not constitute an unfair labor practice prior thereto, and the provisions of section 8 (a) (3) and section 8 (b) (2) of the National Labor Relations Act as amended by this title shall not make an unfair labor practice the performance of any obligation under a collective-bargaining agreement entered into prior to the date of the enactment of this Act, or (in the case of an agreement for a period of not more than one year) entered into on or after such date of enactment, but prior to the effective date of this title, if the performance of such obligation would not have constituted an unfair labor practice under section 8 (3) of the National Labor Relations Act prior to the effective date of this title, unless such agreement was renewed or extended subsequent thereto.

SEC. 103. No provisions of this title shall affect any certification of representatives or any determination as to the appropriate collective-bargaining unit, which was made under section 9 of the National Labor Relations Act prior to the effective date of this title until one year after the date of such certification or if, in respect of any such certification, a collective-bargaining contract was entered into prior to the effective date of this title, until the end of the contract period or until one year after such date, whichever first occurs.

SEC. 104. The amendments made by this title shall take effect sixty days after the date of the enactment of this Act, except that the

Public Law 189 - 82d Congress
Chapter 534 - 1st Session
S. 1959

(38)

AN ACT

To amend the National Labor Relations Act, as amended, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the National Labor Relations Act, as amended, is hereby further amended as follows:

National Labor Relations Act, amendment.
61 Stat. 136.

(a) By adding at the end of said Act the following new section:

29 U.S.C. §167. Elections, etc.

"SEC. 18. No petition entertained, no investigation made, no election held, and no certification issued by the National Labor Relations Board, under any of the provisions of section 9 of the National Labor Relations Act, as amended, shall be invalid by reason of the failure of the Congress of Industrial Organizations to have complied with the requirements of section 9 (f), (g), or (h) of the aforesaid Act prior to December 22, 1949, or by reason of the failure of the American Federation of Labor to have complied with the provisions of section 9 (f), (g), or (h) of the aforesaid Act prior to November 7, 1947: *Provided*, That no liability shall be imposed under any provision of this Act upon any person for failure to honor any election or certificate referred to above, prior to the effective date of this amendment: *Provided, however*, That this proviso shall not have the effect of setting aside or in any way affecting judgments or decrees heretofore entered under section 10 (e) or (f) and which have become final."

29 U.S.C. § 159.

29 U.S.C. § 160.

(b) Subsection (a) (3) of section 8 of said Act is amended by striking out so much of the first sentence as reads "; and (ii) if, following the most recent election held as provided in section 9 (e) the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to authorize such labor organization to make such an agreement:" and inserting in lieu thereof the following: "and has at the time the agreement was made or within the preceding twelve months received from the Board a notice of compliance with sections 9 (f), (g), (h), and (ii) unless following an election held as provided in section 9 (e) within one year preceding the effective date of such agreement, the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement:"

29 U.S.C. § 158.

Secret ballot by Board.

(c) Section 9 (e) of such Act is amended by striking out all of subsections (1) and (2) and inserting in lieu thereof the following: "(1) Upon the filing with the Board, by 30 per centum or more of the employees in a bargaining unit covered by an agreement between their employer and a labor organization made pursuant to section 8 (a) (3), of a petition alleging they desire that such authority be rescinded, the Board shall take a secret ballot of the employees in such unit and certify the results thereof to such labor organization and to the employer." Renumber subsection "(3)" as "(2)".

65 Stat. 601.
65 Stat. 602.

(d) Subsections (f), (g), and (h) of section 9 of such Act are amended by striking out the words "No petition under section 9 (e) (1) shall be entertained," where they appear in each of such subsections.

Approved October 22, 1951.

authority of the President to appoint certain officers conferred upon him by section 3 of the National Labor Relations Act as amended by this title may be exercised forthwith.

TITLE II—CONCILIATION OF LABOR DISPUTES IN INDUSTRIES AFFECTING COMMERCE; NATIONAL EMERGENCIES

SEC. 201. That it is the policy of the United States that—

(a) sound and stable industrial peace and the advancement of the general welfare, health, and safety of the Nation and of the best interests of employers and employees can most satisfactorily be secured by the settlement of issues between employers and employees through the processes of conference and collective bargaining between employers and the representatives of their employees;

(b) the settlement of issues between employers and employees through collective bargaining may be advanced by making available full and adequate governmental facilities for conciliation, mediation, and voluntary arbitration to aid and encourage employers and the representatives of their employees to reach and maintain agreements concerning rates of pay, hours, and working conditions, and to make all reasonable efforts to settle their differences by mutual agreement reached through conferences and collective bargaining or by such methods as may be provided for in any applicable agreement for the settlement of disputes; and

(c) certain controversies which arise between parties to collective-bargaining agreements may be avoided or minimized by making available full and adequate governmental facilities for furnishing assistance to employers and the representatives of their employees in formulating for inclusion within such agreements provision for adequate notice of any proposed changes in the terms of such agreements, for the final adjustment of grievances or questions regarding the application or interpretation of such agreements, and other provisions designed to prevent the subsequent arising of such controversies.

SEC. 202. (a) There is hereby created an independent agency to be known as the Federal Mediation and Conciliation Service (herein referred to as the "Service", except that for sixty days after the date of the enactment of this Act such term shall refer to the Conciliation Service of the Department of Labor). The Service shall be under the direction of a Federal Mediation and Conciliation Director (hereinafter referred to as the "Director"), who shall be appointed by the President by and with the advice and consent of the Senate. The Director shall receive compensation at the rate of $12,000 per annum. The Director shall not engage in any other business, vocation, or employment.

(b) The Director is authorized, subject to the civil-service laws, to appoint such clerical and other personnel as may be necessary for the execution of the functions of the Service, and shall fix their compensation in accordance with the Classification Act of 1923, as amended, and may, without regard to the provisions of the civil-service laws and the Classification Act of 1923, as amended, appoint and fix the compensation of such conciliators and mediators as may be necessary to carry

out the functions of the Service. The Director is authorized to make such expenditures for supplies, facilities, and services as he deems necessary. Such expenditures shall be allowed and paid upon presentation of itemized vouchers therefor approved by the Director or by any employee designated by him for that purpose.

(c) The principal office of the Service shall be in the District of Columbia, but the Director may establish regional offices convenient to localities in which labor controversies are likely to arise. The Director may by order, subject to revocation at any time, delegate any authority and discretion conferred upon him by this Act to any regional director, or other officer or employee of the Service. The Director may establish suitable procedures for cooperation with State and local mediation agencies. The Director shall make an annual report in writing to Congress at the end of the fiscal year.

(d) All mediation and conciliation functions of the Secretary of Labor or the United States Conciliation Service under section 8 of the Act entitled "An Act to create a Department of Labor", approved March 4, 1913 (U. S. C., title 29, sec. 51), and all functions of the United States Conciliation Service under any other law are hereby transferred to the Federal Mediation and Conciliation Service, together with the personnel and records of the United States Conciliation Service. Such transfer shall take effect upon the sixtieth day after the date of enactment of this Act. Such transfer shall not affect any proceedings pending before the United States Conciliation Service or any certification, order, rule, or regulation theretofore made by it or by the Secretary of Labor. The Director and the Service shall not be subject in any way to the jurisdiction or authority of the Secretary of Labor or any official or division of the Department of Labor.

FUNCTIONS OF THE SERVICE

SEC. 203. (a) It shall be the duty of the Service, in order to prevent or minimize interruptions of the free flow of commerce growing out of labor disputes, to assist parties to labor disputes in industries affecting commerce to settle such disputes through conciliation and mediation.

(b) The Service may proffer its services in any labor dispute in any industry affecting commerce, either upon its own motion or upon the request of one or more of the parties to the dispute, whenever in its judgment such dispute threatens to cause a substantial interruption of commerce. The Director and the Service are directed to avoid attempting to mediate disputes which would have only a minor effect on interstate commerce if State or other conciliation services are available to the parties. Whenever the Service does proffer its services in any dispute, it shall be the duty of the Service promptly to put itself in communication with the parties and to use its best efforts, by mediation and conciliation, to bring them to agreement.

(c) If the Director is not able to bring the parties to agreement by conciliation within a reasonable time, he shall seek to induce the parties voluntarily to seek other means of settling the dispute without resort to strike, lock-out, or other coercion, including submission to the employees in the bargaining unit of the employer's last offer of settlement for approval or rejection in a secret ballot. The failure or refusal of either party to agree to any procedure suggested by the Director

shall not be deemed a violation of any duty or obligation imposed by this Act.

(d) Final adjustment by a method agreed upon by the parties is hereby declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective-bargaining agreement. The Service is directed to make its conciliation and mediation services available in the settlement of such grievance disputes only as a last resort and in exceptional cases.

SEC. 204. (a) In order to prevent or minimize interruptions of the free flow of commerce growing out of labor disputes, employers and employees and their representatives, in any industry affecting commerce, shall—

(1) exert every reasonable effort to make and maintain agreements concerning rates of pay, hours, and working conditions, including provision for adequate notice of any proposed change in the terms of such agreements;

(2) whenever a dispute arises over the terms or application of a collective-bargaining agreement and a conference is requested by a party or prospective party thereto, arrange promptly for such a conference to be held and endeavor in such conference to settle such dispute expeditiously; and

(3) in case such dispute is not settled by conference, participate fully and promptly in such meetings as may be undertaken by the Service under this Act for the purpose of aiding in a settlement of the dispute.

SEC. 205. (a) There is hereby created a National Labor-Management Panel which shall be composed of twelve members appointed by the President, six of whom shall be selected from among persons outstanding in the field of management and six of whom shall be selected from among persons outstanding in the field of labor. Each member shall hold office for a term of three years, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and the terms of office of the members first taking office shall expire, as designated by the President at the time of appointment, four at the end of the first year, four at the end of the second year, and four at the end of the third year after the date of appointment. Members of the panel, when serving on business of the panel, shall be paid compensation at the rate of $25 per day, and shall also be entitled to receive an allowance for actual and necessary travel and subsistence expenses while so serving away from their places of residence.

(b) It shall be the duty of the panel, at the request of the Director, to advise in the avoidance of industrial controversies and the manner in which mediation and voluntary adjustment shall be administered, particularly with reference to controversies affecting the general welfare of the country.

NATIONAL EMERGENCIES

SEC. 206. Whenever in the opinion of the President of the United States, a threatened or actual strike or lock-out affecting an entire industry or a substantial part thereof engaged in trade, commerce, transportation, transmission, or communication among the several States or with foreign nations, or engaged in the production of goods

for commerce, will, if permitted to occur or to continue, imperil the national health or safety, he may appoint a board of inquiry to inquire into the issues involved in the dispute and to make a written report to him within such time as he shall prescribe. Such report shall include a statement of the facts with respect to the dispute, including each party's statement of its position but shall not contain any recommendations. The President shall file a copy of such report with the Service and shall make its contents available to the public.

SEC. 207. (a) A board of inquiry shall be composed of a chairman and such other members as the President shall determine, and shall have power to sit and act in any place within the United States and to conduct such hearings either in public or in private, as it may deem necessary or proper, to ascertain the facts with respect to the causes and circumstances of the dispute.

(b) Members of a board of inquiry shall receive compensation at the rate of $50 for each day actually spent by them in the work of the board, together with necessary travel and subsistence expenses.

(c) For the purpose of any hearing or inquiry conducted by any board appointed under this title, the provisions of sections 9 and 10 (relating to the attendance of witnesses and the production of books, papers, and documents) of the Federal Trade Commission Act of September 16, 1914, as amended (U. S. C. 19, title 15, secs. 49 and 50, as amended), are hereby made applicable to the powers and duties of such board.

SEC. 208. (a) Upon receiving a report from a board of inquiry the President may direct the Attorney General to petition any district court of the United States having jurisdiction of the parties to enjoin such strike or lock-out or the continuing thereof, and if the court finds that such threatened or actual strike or lock-out—

(i) affects an entire industry or a substantial part thereof engaged in trade, commerce, transportation, transmission, or communication among the several States or with foreign nations, or engaged in the production of goods for commerce; and

(ii) if permitted to occur or to continue, will imperil the national health or safety, it shall have jurisdiction to enjoin any such strike or lock-out, or the continuing thereof, and to make such other orders as may be appropriate.

(b) In any case, the provisions of the Act of March 23, 1932, entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes", shall not be applicable.

(c) The order or orders of the court shall be subject to review by the appropriate circuit court of appeals and by the Supreme Court upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 29, secs. 346 and 347).

SEC. 209. (a) Whenever a district court has issued an order under section 208 enjoining acts or practices which imperil or threaten to imperil the national health or safety, it shall be the duty of the parties to the labor dispute giving rise to such order to make every effort to adjust and settle their differences, with the assistance of the Service created by this Act. Neither party shall be under any duty to accept, in whole or in part, any proposal of settlement made by the Service.

(b) Upon the issuance of such order, the President shall reconvene

the board of inquiry which has previously reported with respect to the dispute. At the end of a sixty-day period (unless the dispute has been settled by that time), the board of inquiry shall report to the President the current position of the parties and the efforts which have been made for settlement, and shall include a statement by each party of its position and a statement of the employer's last offer of settlement. The President shall make such report available to the public. The National Labor Relations Board, within the succeeding fifteen days, shall take a secret ballot of the employees of each employer involved in the dispute on the question of whether they wish to accept the final offer of settlement made by their employer as stated by him and shall certify the results thereof to the Attorney General within five days thereafter.

SEC. 210. Upon the certification of the results of such ballot or upon a settlement being reached, whichever happens sooner, the Attorney General shall move the court to discharge the injunction, which motion shall then be granted and the injunction discharged. When such motion is granted, the President shall submit to the Congress a full and comprehensive report of the proceedings, including the findings of the board of inquiry and the ballot taken by the National Labor Relations Board, together with such recommendations as he may see fit to make for consideration and appropriate action.

COMPILATION OF COLLECTIVE BARGAINING AGREEMENTS, ETC.

SEC. 211. (a) For the guidance and information of interested representatives of employers, employees, and the general public, the Bureau of Labor Statistics of the Department of Labor shall maintain a file of copies of all available collective bargaining agreements and other available agreements and actions thereunder settling or adjusting labor disputes. Such file shall be open to inspection under appropriate conditions prescribed by the Secretary of Labor, except that no specific information submitted in confidence shall be disclosed.

(b) The Bureau of Labor Statistics in the Department of Labor is authorized to furnish upon request of the Service, or employers, employees, or their representatives, all available data and factual information which may aid in the settlement of any labor dispute, except that no specific information submitted in confidence shall be disclosed.

EXEMPTION OF RAILWAY LABOR ACT

SEC. 212. The provisions of this title shall not be applicable with respect to any matter which is subject to the provisions of the Railway Labor Act, as amended from time to time.

TITLE III

SUITS BY AND AGAINST LABOR ORGANIZATIONS.

SEC. 301. (a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

(b) Any labor organization which represents employees in an industry affecting commerce as defined in this Act and any employer whose activities affect commerce as defined in this Act shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

(c) For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

(d) The service of summons, subpena, or other legal process of any court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

(e) For the purposes of this section, in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

RESTRICTIONS ON PAYMENTS TO EMPLOYEE REPRESENTATIVES.

SEC. 302. (a) It shall be unlawful for any employer to pay or deliver, or to agree to pay or deliver, any money or other thing of value to any representative of any of his employees who are employed in an industry affecting commerce.

(b) It shall be unlawful for any representative of any employees who are employed in an industry affecting commerce to receive or accept, or to agree to receive or accept, from the employer of such employees any money or other thing of value.

(c) The provisions of this section shall not be applicable (1) with respect to any money or other thing of value payable by an employer to any representative who is an employee or former employee of such employer, as compensation for, or by reason of, his services as an employee of such employer; (2) with respect to the payment or delivery of any money or other thing of value in satisfaction of a judgment of any court or a decision or award of an arbitrator or impartial chairman or in compromise, adjustment, settlement or release of any claim, complaint, grievance, or dispute in the absence of fraud or duress; (3) with respect to the sale or purchase of an article or commodity at the prevailing market price in the regular course of business; (4) with respect to money deducted from the wages of employees in payment of membership dues in a labor organization: *Provided*, That the employer has received from each employee, on whose account such deductions are made, a written assignment which shall not be irrevocable for a period of more than one year, or beyond the termination date of the applicable collective agreement, whichever occurs sooner; or (5) with respect to money or other thing of value paid to a trust

fund established by such representative, for the sole and exclusive benefit of the employees of such employer, and their families and dependents (or of such employees, families, and dependents jointly with the employees of other employers making similar payments, and their families and dependents): *Provided*, That (A) such payments are held in trust for the purpose of paying, either from principal or income or both, for the benefit of employees, their families and dependents, for medical or hospital care, pensions on retirement or death of employees, compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, or unemployment benefits or life insurance, disability and sickness insurance, or accident insurance; (B) the detailed basis on which such payments are to be made is specified in a written agreement with the employer, and employees and employers are equally represented in the administration of such fund, together with such neutral persons as the representatives of the employers and the representatives of the employees may agree upon and in the event the employer and employee groups deadlock on the administration of such fund and there are no neutral persons empowered to break such deadlock, such agreement provides that the two groups shall agree on an impartial umpire to decide such dispute, or in event of their failure to agree within a reasonable length of time, an impartial umpire to decide such dispute shall, on petition of either group, be appointed by the district court of the United States for the district where the trust fund has its principal office, and shall also contain provisions for an annual audit of the trust fund, a statement of the results of which shall be available for inspection by interested persons at the principal office of the trust fund and at such other places as may be designated in such written agreement; and (C) such payments as are intended to be used for the purpose of providing pensions or annuities for employees are made to a separate trust which provides that the funds held therein cannot be used for any purpose other than paying such pensions or annuities.

(d) Any person who willfully violates any of the provisions of this section shall, upon conviction thereof, be guilty of a misdemeanor and be subject to a fine of not more than $10,000 or to imprisonment for not more than one year, or both.

(e) The district courts of the United States and the United States courts of the Territories and possessions shall have jurisdiction, for cause shown, and subject to the provisions of section 17 (relating to notice to opposite party) of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914, as amended (U. S. C., title 28, sec. 381), to restrain violations of this section, without regard to the provisions of sections 6 and 20 of such Act of October 15, 1914, as amended (U. S. C., title 15, sec. 17, and title 29, sec. 52), and the provisions of the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes", approved March 23, 1932 (U. S. C., title 29, secs. 101–115).

(f) This section shall not apply to any contract in force on the date of enactment of this Act, until the expiration of such contract, or until July 1, 1948, whichever first occurs.

(g) Compliance with the restrictions contained in subsection (c) (5) (B) upon contributions to trust funds, otherwise lawful, shall not be applicable to contributions to such trust funds established by collective agreement prior to January 1, 1946, nor shall subsection (c) (5) (A) be construed as prohibiting contributions to such trust funds if prior to January 1, 1947, such funds contained provisions for pooled vacation benefits.

BOYCOTTS AND OTHER UNLAWFUL COMBINATIONS

SEC. 303. (a) It shall be unlawful, for the purposes of this section only, in an industry or activity affecting commerce, for any labor organization to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is—

(1) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person;

(2) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9 of the National Labor Relations Act;

(3) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 9 of the National Labor Relations Act;

(4) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class unless such employer is failing to conform to an order or certification of the National Labor Relations Board determining the bargaining representative for employees performing such work. Nothing contained in this subsection shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under the National Labor Relations Act.

(b) Whoever shall be injured in his business or property by reason of any violation of subsection (a) may sue therefor in any district court of the United States subject to the limitations and provisions of section 301 hereof without respect to the amount in controversy, or in any other court having jurisdiction of the parties, and shall recover the damages by him sustained and the cost of the suit.

RESTRICTION ON POLITICAL CONTRIBUTIONS

SEC. 304. Section 313 of the Federal Corrupt Practices Act, 1925 (U. S. C., 1940 edition, title 2, sec. 251; Supp. V, title 50, App., sec. 1509), as amended, is amended to read as follows:

"SEC. 313. It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, or for any corporation whatever, or any labor organization to make a contribution or expenditure in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices, or for any candidate, political committee, or other person to accept or receive any contribution prohibited by this section. Every corporation or labor organization which makes any contribution or expenditure in violation of this section shall be fined not more than $5,000; and every officer or director of any corporation, or officer of any labor organization, who consents to any contribution or expenditure by the corporation or labor organization, as the case may be, in violation of this section shall be fined not more than $1,000 or imprisoned for not more than one year, or both. For the purposes of this section 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work."

STRIKES BY GOVERNMENT EMPLOYEES

SEC. 305. It shall be unlawful for any individual employed by the United States or any agency thereof including wholly owned Government corporations to participate in any strike. Any individual employed by the United States or by any such agency who strikes shall be discharged immediately from his employment, and shall forfeit his civil service status, if any, and shall not be eligible for reemployment for three years by the United States or any such agency.

TITLE IV

CREATION OF JOINT COMMITTEE TO STUDY AND REPORT ON BASIC PROBLEMS AFFECTING FRIENDLY LABOR RELATIONS AND PRODUCTIVITY

SEC. 401. There is hereby established a joint congressional committee to be known as the Joint Committee on Labor-Management Relations (hereafter referred to as the committee), and to be composed of seven Members of the Senate Committee on Labor and Public Welfare, to be appointed by the President pro tempore of the Senate, and seven Members of the House of Representatives Committee on Education and Labor, to be appointed by the Speaker of the House of Representatives. A vacancy in membership of the committee shall not affect the powers of the remaining members to execute the functions of the committee, and shall be filled in the same manner as the

original selection. The committee shall select a chairman and a vice chairman from among its members.

SEC. 402. The committee, acting as a whole or by subcommittee, shall conduct a thorough study and investigation of the entire field of labor-management relations, including but not limited to—

(1) the means by which permanent friendly cooperation between employers and employees and stability of labor relations may be secured throughout the United States;

(2) the means by which the individual employee may achieve a greater productivity and higher wages, including plans for guaranteed annual wages, incentive profit-sharing and bonus systems;

(3) the internal organization and administration of labor unions, with special attention to the impact on individuals of collective agreements requiring membership in unions as a condition of employment;

(4) the labor relations policies and practices of employers and associations of employers;

(5) the desirability of welfare funds for the benefit of employees and their relation to the social-security system;

(6) the methods and procedures for best carrying out the collective-bargaining processes, with special attention to the effects of industry-wide or regional bargaining upon the national economy;

(7) the administration and operation of existing Federal laws relating to labor relations; and

(8) such other problems and subjects in the field of labor-management relations as the committee deems appropriate.

SEC. 403. The committee shall report to the Senate and the House of Representatives not later than March 15, 1948, the results of its study and investigation, together with such recommendations as to necessary legislation and such other recommendations as it may deem advisable, and shall make its final report not later than January 2, 1949.

SEC. 404. The committee shall have the power, without regard to the civil-service laws and the Classification Act of 1923, as amended, to employ and fix the compensation of such officers, experts, and employees as it deems necessary for the performance of its duties, including consultants who shall receive compensation at a rate not to exceed $35 for each day actually spent by them in the work of the committee, together with their necessary travel and subsistence expenses. The committee is further authorized, with the consent of the head of the department or agency concerned, to utilize the services, information, facilities, and personnel of all agencies in the executive branch of the Government and may request the governments of the several States, representatives of business, industry, finance, and labor, and such other persons, agencies, organizations, and instrumentalities as it deems appropriate to attend its hearings and to give and present information, advice, and recommendations.

SEC. 405. The committee, or any subcommittee thereof, is authorized to hold such hearings; to sit and act at such times and places during the sessions, recesses, and adjourned periods of the Eightieth Congress; to require by subpena or otherwise the attendance of such witnesses and the production of such books, papers, and documents; to administer oaths; to take such testimony; to have such printing and binding

done; and to make such expenditures within the amount appropriated therefor; as it deems advisable. The cost of stenographic services in reporting such hearings shall not be in excess of 25 cents per one hundred words. Subpenas shall be issued under the signature of the chairman or vice chairman of the committee and shall be served by any person designated by them:

SEC. 406. The members of the committee shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of the duties vested in the committee, other than expenses in connection with meetings of the committee held in the District of Columbia during such times as the Congress is in session.

SEC. 407. There is hereby authorized to be appropriated the sum of $150,000, or so much thereof as may be necessary, to carry out the provisions of this title, to be disbursed by the Secretary of the Senate on vouchers signed by the chairman.

TITLE V

DEFINITIONS

SEC. 501. When used in this Act—

(1) The term "industry affecting commerce" means any industry or activity in commerce or in which a labor dispute would burden or obstruct commerce or tend to burden or obstruct commerce or the free flow of commerce.

(2) The term "strike" includes any strike or other concerted stoppage of work by employees (including a stoppage by reason of the expiration of a collective-bargaining agreement) and any concerted slow-down or other concerted interruption of operations by employees.

(3) The terms "commerce", "labor disputes", "employer", "employee", "labor organization", "representative", "person", and "supervisor" shall have the same meaning as when used in the National Labor Relations Act as amended by this Act.

SAVING PROVISION

SEC. 502. Nothing in this Act shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this Act be construed to make the quitting of his labor by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent; nor shall the quitting of labor by an employee or employees in good faith because of abnormally dangerous conditions for work at the place of employment of such employee or employees be deemed a strike under this Act.

SEPARABILITY

SEC. 503. If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the

remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

JOSEPH W. MARTIN JR.
Speaker of the House of Representatives.

A H VANDENBERG.
President of the Senate pro tempore.

IN THE HOUSE OF REPRESENTATIVES, U. S.,
June 20, 1947.

The House of Representatives having proceeded to reconsider the bill (H. R. 3020) entitled "An Act to amend the National Labor Relations Act, to provide additional facilities for the mediation of labor disputes affecting commerce, to equalize legal responsibilities of labor organizations and employers, and for other purposes," returned by the President of the United States with his objections, to the House of Representatives, in which it originated, it was

Resolved, That the said bill pass, two-thirds of the House of Representatives agreeing to pass the same.

Attest:

JOHN ANDREWS
Clerk.

I certify that this Act originated in the House of Representatives.

JOHN ANDREWS
Clerk.

IN THE SENATE OF THE UNITED STATES,
June 23 (legislative day, April 21), 1947.

The Senate having proceeded to reconsider the bill (H. R. 3020) "An Act to amend the National Labor Relations Act, to provide additional facilities for the mediation of labor disputes affecting commerce, to equalize legal responsibilities of labor organizations and employers, and for other purposes", returned by the President of the United States with his objections, to the House of Representatives, in which it originated, and passed by the House of Representatives on reconsideration of the same, it was

Resolved, That the said bill pass, two-thirds of the Senate having voted in the affirmative.

Attest:

CARL A. LOEFFLER
Secretary.